[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

December 22, 1939.

RE ISMAIL BIN RENTAH DECEASED HAJI HUSSAIN BIN SINGAH

vs.

LIAH BINTI LERONG & 3 OTHERS.

[NEGRI SEMBILAN ORIGINATING SUMMONS

No. 94 of 1939]

Co-operative Societies Enactment No. 7 of 1922 S. 22—Co-operative Societies Rules, Rule 21—Co-operative Society—death of member—nomination of person to receive deceased's share—whether deceased's share in Society passes to nominee or to the legal personal representative of deceased.

A member of the Malay Public Servants' Co-operative Credit Society Ltd. of Seremban nominated his natural daughter, Maznah, to receive his share or interest in the Society in the event of his death. The letter of nomination is in Malay and the relevant portion reads as follows:—

> "Whereas I, Ismail bin Rentah, living at Terusan, Kuala Pilah, am a member of the Malay Public Servants' Co-operative Society, Negri Sembilan, which Society has been registered under the provisions of the Co-operative Societies Enactment No. 7 of 1922, do nominate/appoint in the presence of two witnesses Maznah binte Ismail living at Terusan and who is related to me by way of being my child as being the person who may receive all my money in the said Society if I die in accordance with the provisions of Section 22 of the Co-operative Societies Enactment 1922".

The member died and left surviving him certain beneficiaries entitled to share in his estate according to the Muhammadan Law.

Held, that the nomination did not confer a right on the nominee to take beneficially.

Cases referred to:—

(1) *Arthur v. Bokesham,* 11 Mod. at p. 150.

(2) *Queen v. Morris,* L.R. 1 C.C.R. at p. 95.

(3) *Urquhart v. Butterfield,* (1887) 36 Ch. D. 55.

APPEAL from the order of Deputy Registrar, Kuala Pilah.

Parties in person.

Cur. Adv. Vult.

Raja Musa, Ag. J.—In this case Ismail bin Rentah, hereinafter called the deceased, was a member of the Malay Servants' Co-operative Credit Society Limited, Negri Sembilan, hereinafter called the Society.

In accordance with the requirements of section 22 of the Co-operative Societies Enactment (chapter 97) the deceased nominated his natural daughter, Maznah, hereinafter called the Nominee, to receive, in the event of his death, his share or interest in the Society.

The deceased died on the 15th July, 1937, leaving estate to the total value of $519.42 of which $271.58 represented his share or interest in the Society.

At the time of his death the following were the beneficiaries entitled to share in his estate according to the Muhammadan Law:—

1. Liah binti Lerong:
   Mother of deceased.
2. Zainab binti Mohamed Amin:
   Widow of deceased but not the natural mother of the Nominee.
3. Suda bin Rentah:
   Full brother of deceased.
4. Jaharah binti Rentah:
   Full sister of deceased.
5. Maznah binti Ismail:
   The Nominee and natural daughter of deceased.
6. Zainon binti Ismail:
   Natural daughter of deceased from No. 2, Zainab.

The Deputy Registrar in Kuala Pilah ordered that the sum of $271.58 be distributed among all the beneficiaries according to Muhammadan Law. The matter now comes before me on appeal though incorrectly brought by way of originating summons.

The parties were not represented which is a matter of great regret to me since I have had to try and elucidate this problem by my own researches without the benefit of any argument whatsoever.

I have had supplied to me a copy of the By-laws of the Society and of the nomination in this case.

The sole contest in this case is whether the money with the Society belonging to the deceased should go to the Nominee beneficially or to all the beneficiaries under the Muhammadan Law, and the answer to that seems to me to depend solely upon the effect of section 22 of the Co-operative Societies Enactment.

In his grounds of judgment the learned Deputy Registrar said:—

> "In his application the Administrator claimed that since Maznah binti Ismail was deceased's duly

constituted nominee she was the only one entitled to receive the whole of the amount standing to deceased's credit in the Society. He, therefore, prayed for an order distributing the whole amount of $271.58 to her."

The other beneficiaries contended that the money was part of deceased's estate and effects and as such should be distributed amongst his beneficiaries according to the Muhammadan Law.

The question in this case is whether the sum of $271.58 standing to the credit of the deceased in the Society forms part of his estate.

Rule 21 Co-operative Societies Rules reads as follows:—

"Any member of a registered society may in writing in the presence of at least two witnesses attesting the same or by a declaration duly made nominate any person or persons to whom his share or interest or the value of such share or interest and all other monies referred to in section 22 of the Enactment that may be due to him may on the death of such member be paid or transferred under the provisions of the said section and may in similar manner from time to time revoke or vary such nomination provided that the value of the member's share or interest shall be represented by the sum actually paid by the member to acquire such share or interest unless the by-laws provide for calculation thereof otherwise".

The amount which stands to the credit of a deceased person in the Society is subject to Estate Duty.

To my mind this rule is one of procedure made for the convenience of the Society particularly to enable the Society to obtain a valid receipt in respect of deceased's credits should, for example, there be any delay in extracting Letters of Administration or a disagreement amongst the beneficiaries which might involve the Society. Such being the case it would be wrong in my opinion to interpret it as excluding the amount from the estate.

In this case, therefore, I hold that the sum of $271.58 forms part of the estate and effects of the deceased and should be distributed amongst his beneficiaries.

Section 22 of the Enactment reads as follows:—

"22. (i) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the Rules made in this behalf, or, if there is no person so nominated to such person as may appear to the Committee to be the legal personal representative as the case may be a sum representing the value of such member's share or interest, as ascertained in accordance with the Rules or by-laws.

Provided that—

(a) in the case of a society with unlimited liability, such nominee or legal personal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;

(b) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or legal personal representative as the case may be, being qualified in accordance with the Rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(ii) A registered society may pay all other moneys due to the deceased member from the society to such nominee or legal personal representative, as the case may be.

(iii) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person".

Rule 21 under the Enactment has already been set out in the judgment of the learned Deputy Registrar and the only other relevant provision I need set out for the purposes of this case is by-law 18 of the By-laws of the Society which reads as follows:—

"Every member shall on election nominate one or more nominees to whom sums due to the member by the society shall be paid on his death, and shall notify the society of any change in the name(s) or address(es) of his nominee(s)".

Muhammadan Law, so far as Malays are concerned, and I must make it perfectly clear that whatever I am now saying in this judgment is intended to apply solely and entirely to Malays and to Malays only and that I am not concerned with the position of non-Malays, is, without doubt, part of the common law of the land. By Muhammadan Law, so far as my researches go—

(1) a man may make a gift **inter vivos** of a definite ascertainable thing;

(2) a gift **mortis causa** is treated as a disposition by will;

(3) a man may not will away more than one-third of his property.

A bequest in excess of this limit is bad to that extent unless the heirs consent.

A bequest to an heir is wholly inoperative unless the heirs consent thereto.

In this case the letter of nomination is in Malay and the relevant portion is as follows:—

"Whereas I, Ismail bin Rentah, living at Terusan, Kuala Pilah, am a member of the Malay Public Servants' Co-operative Society, Negri Sembilan, which Society has been registered under the provisions of the Co-operative Societies Enactment No. 7 of 1922, do nominate/appoint in the presence of two witnesses Maznah binti Ismail living at Terusan and who is related to me by way of being my child as being the person who may receive all my money in the said Society if I die in accordance with the provisions of section 22 of the Co-operative Societies Enactment 1922".

Looking at this document from the purely Muhammadan Law point of view I have no hesitation in saying that it must be governed by the law of wills. As a will the bequest is bad because it is made to an heir and the other heirs definitely do not consent thereto.

I am of the opinion that this document cannot be treated as a gift *inter vivos* because there was never any transfer to the donee. At most it is a gift *mortis causa* and such a gift as I have indicated is governed by the law of wills.

In the result therefore under Muhammadan Law this sum of money falls to be divided among all the beneficiaries.

That is the common law of the land. And the question that follows in this case is has that law been abrogated by the provisions of section 22 of the Co-operative Societies Enactment and the rules I have set out above. In my view it has not.

In construing an enactment the words of that enactment must be given their plain and natural meaning. But if there is any ambiguity reference may be made to past law.

> "The general rule in exposition of all Acts of Parliament is this, that in all doubtful matters, and where the expression is in general terms, they are to receive such a construction as may be agreeable to the rules of common law in cases of that nature; for statutes are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare".
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> **Arthur vs. Bokesham**(1).
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> "It must be remembered that it is a sound rule to construe a statute in conformity with the common law rather than against it, except where or so far as the statute is plainly intended to alter the course of the common law". **Per** Byles J. in the **Queen vs. Morris**(2).

Section 22 of the Enactment empowers the Society to do one of two things—

(i) transfer the share or interest of a deceased member to the nominee, or

(ii) pay to the nominee the value of a deceased member's share or interest in the Society.

If the course adopted is one of transfer to the nominee he becomes a member of the society and this would, in itself, lend colour to a construction that a nominee takes beneficially.

The word "nominate" has not been defined in the Enactment or in the rules. In its dictionary sense it has been defined to mean "to name, or designate by name, for an office or place; to appoint". In this sense it does not convey to me the meaning that to nominate a person to receive a fund necessarily means that that person is to receive that fund beneficially. Similarly it seems to me to follow that to nominate a person to whom property may be transferred does not necessarily mean that that person takes that property beneficially.

In *Urquhart v. Butterfield*(3) a case affecting the Customs Annuity and Benevolent Fund, it was held that a nominee must be a person who is to take a beneficial interest in the fund and that there cannot be a nomination of a person who is to take as a trustee for others. But in that case the rules as to nomination which the Court had to interpret specifically contained the words "for the benefit of his nominee or nominees". In this case no such words or words to that effect appear in the section or the rules.

In the case of Friendly Societies there is a *prima facie* presumption that the nominee is intended to take beneficially, but it is a question depending on evidence —15 *Halsbury* (*Hailsham edition*) page 353. It is, however, to be borne in mind that in England there is no common law, as there is in this country, restricting the right of its nationals to dispose of property by will and the question then arises here as to whether such a presumption does operate where Malays are concerned. In my view it does not. One of the objects of Friendly Societies in England appears to be "to provide for the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which shall mean any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority".—Section 8 (1) (a) Friendly Societies Act, 1896, 59 and 60 Vict. It is therefore at least understandable that a nominee of a member of a Friendly Society should be presumed to take beneficially.

The preamble to the Co-operative Societies Enactment reads as follows:—

> "Whereas it is expedient to encourage thrift, self-help and co-operation among agriculturists, artisans and other persons with needs in common, and for that purpose to provide for the constitution and control of co-operative societies:"

Apart from section 22 already cited I can find no other provision in the Enactment to throw light upon the question of the effect of a nomination. It is true that the Society may transfer the share or interest of a deceased member to his nominee who then becomes a member of the Society and this would lend colour to a construction that the nominee takes beneficially. The section however must be read as a whole and in

view of the provisions of sub-section (iii) therein I conclude that the real object of the section primarily is to enable the Society to get a complete discharge from its obligations to a deceased member. It does not purport to affect the question of the devolution of the share or interest of the deceased member—a matter still left open as between the nominee and the real beneficiaries of the estate of the deceased.

For these reasons I am of opinion that, in so far as Malay members of a co-operative society are concerned, a nomination does not confer a right on the nominee to take beneficially and the appeal is accordingly dismissed. I make no order as to costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

GORDON-SMITH, J.

June 10, 1939.

GOPAL RAJARAM v. PUBLIC PROSECUTOR.

[SELANGOR CRIMINAL APPEAL No. 25 of 1939]

Road Traffic Enactment No. 17 of 1937, S. 25 (i)—negligent driving—accident not prima facie evidence of negligence—burden of proof—Evidence Enactment, S. 106.

In a prosecution for negligent driving under Section 25 (i) of the Road Traffic Enactment, the mere fact that an accident has occurred does not shift the burden on to the accused of proving that such accident was not caused by his own negligence. In that case as in all cases, it is the duty of the prosecution to prove the charge against the accused beyond reasonable doubt. The essence of the charge is not the accident nor any damage flowing from it, but the negligent driving, which is the criminal offence charged.

Where negligence gives rise to both criminal and civil proceedings by an injured party, it does not follow that because there is a civil claim established by a person against another that that other has become criminally responsible in the same matter. A distinction is to be drawn between a negligent act or omission which gives rise to civil liability and one which gives rise to a criminal responsibility. Whereas in a civil case once negligence is proved, the degree of negligence is irrelevant, in a criminal case the degree of negligence is the determining question.

Cases referred to:—

(1) *Andrews v. Director of Public Prosecutions,* 26 Cr. A.R. 34; (1937) A.C. 576.

(2) *Blythe v. Birmingham,* (1856) 11 Excheq. 781.

(3) *Ellor v. Selfridge,* 46 T.L.R. 236.

(4) *Hunter v. Wright,* (1938) 2 All. E.R. 621.

(5) *Rex v. Bateman,* 94 L.J.K.B. 791; 19 Cr. A.R. 8.

(6) *Wilson v. Public Prosecutor,* 8 M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

H. Y. Teh for the appellant. According to the evidence, the car was being driven at a moderate speed. Before it overturned it had to negotiate a fairly sharp and narrow bend. The surface at the time was very skiddy, the road being tarred and wet due to a drizzle. The accident took place on the near side of the bend but had it been driven fast, it would have overturned on the far side. There was no evidence of any mechanical defect in the car. The cause of the accident was a skid and the car is of a type that overturns easily. He submitted that the mere fact that the car overturned is not sufficient proof that there has been negligence on the part of the driver. In any case, there is a reasonable doubt and the appellant is entitled to the benefit of it. He referred to *Hunter v. Wright,*(4). As to *Wilson v. Public Prosecutor*(6) the facts there were different.

A. J. Grattan-Bellew, Assistant Legal Adviser, for the Public Prosecutor cited *Wilson v. Public Prosecutor*(6) and *Ellor v. Selfridge*(3), and referred to Ss. 106 and 114 of the Evidence Enactment. There being no eye witnesses, the Court was entitled to draw the inference from the position in which the car was found after the accident, that the accused had been negligent, bearing in mind the nature of the road and the fact that there was apparently no other traffic at the time.

Cur. Adv. Vult.

Gordon-Smith, J.—In this case the appellant was charged with contravening Section 25 (i) of the Road Traffic Enactment No. 17/37 in that on the 2nd February last at 11.15 p.m. at the 22nd mile on the main North Road near Rawang, he drove a motor car in a negligent manner.

The appellant had duly reported at the Rawang Police Station an accident which he said was due to his car skidding, resulting in the car being overturned. He was on his way from Penang to Kuala Lumpur.

In consequence of the report, the police visited the scene but the date and time of such visit was not in evidence. There, at the scene, they found a Ford 8 H.P. Saloon, P. 6119 overturned, partly on the road and partly on what had been the grass verge, but road widening had taken place and the grass had not completely regrown. The wheels of the car were in